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| RDS-WHOIS2 RT Subgroup Report:  Privacy/Proxy Services |
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| DRAFT FOR SUBGROUP USE TO DOCUMENT DRAFT FINDINGS AND RECOMMENDATIONS (IF ANY) |
| Volker Greimann (Rapporteur) Cathrin Bauer-Bulst Stephanie Perrin Susan Kawaguchi |
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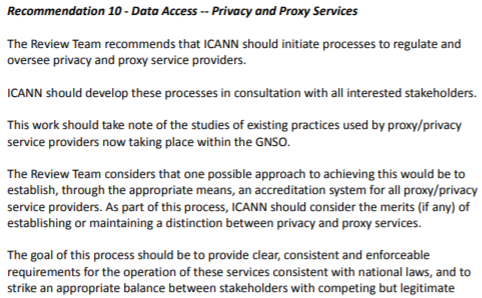
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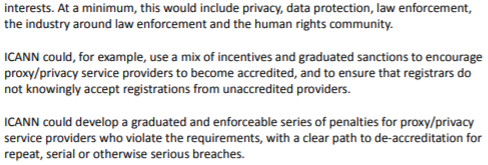
# Topic

Subgroup 1 - WHOIS1 Rec10 Privacy/Proxy Services is tasked with investigating, analyzing, and drafting recommendations (if needed) to address the following Review objective:

Consistent with ICANN’s mission and Bylaws, Section 4.6(e)(iv), the Review Team will (a) evaluate the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps), (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS), and (c) determine if any specific measurable steps should be recommended to enhance results achieved through the prior RT’s recommendations. This includes developing a framework to measure and assess the effectiveness of recommendations, and applying that approach to all areas of WHOIS originally assessed by the prior RT (as applicable).

The specific [WHOIS1 Recommendation](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) to be assessed by this subgroup appears below:





Noting that:

* The 2013 RAA introduced a specification on privacy and proxy registrations requiring registrars to comply with certain requirements regarding such registrations through affiliated Privacy/Proxy Service Providers as a first step towards implementing this recommendation; and
* The Privacy/Proxy Services Accreditation Issues (PPSAI) Implementation Review Team (IRT) is currently working on an implementation of this recommendation that will also include unaffiliated providers of such services.

The subgroup agreed that this review should encompass the work completed both through the RAA specification and the PPSAI PDP, and whether the agreed upon details adhere to WHOIS1 Recommendation #10.

# Summary of Relevant Research

To conducts its research, all members of this subgroup reviewed the following background materials, posted on the [subgroup's wiki page](https://community.icann.org/pages/viewpage.action?pageId=71604717):

* [WHOIS Review Team (WHOIS1) Final Report](https://www.icann.org/en/system/files/files/final-report-11may12-en.pdf) (2012) and [Action Plan](https://www.icann.org/en/system/files/files/implementation-action-08nov12-en.pdf)
* [WHOIS Review Team (WHOIS1) Implementation Reports](https://community.icann.org/display/WHO/WHOIS+Review+Implementation+Home), including
  + [Executive Summary of Implementation Report](https://community.icann.org/download/attachments/54691767/WHOIS%20Recs%201_16%2030Sept2016.pdf)
  + [Detailed implementation Report](https://community.icann.org/download/attachments/54691767/WHOIS%20Quarterly%20Summary%2031December2016.pdf)
* WHOIS1 Implementation Briefings on Recommendations 5, 8, 10, 11: [PPT](https://community.icann.org/download/attachments/63145823/WHOIS1-Implementation%20Briefings_final.docx?version=1&modificationDate=1510566466000&api=v2), [PDF](https://community.icann.org/download/attachments/69279139/WHOIS1%20Implementation%20briefings%205%208%2010%2011.pdf?version=1&modificationDate=1506504731000&api=v2)
* [Answers to RDS-WHOIS2 Questions on Implementation Briefings](https://community.icann.org/download/attachments/63145823/WHOIS1-Implementation%20Briefings_final.docx?version=1&modificationDate=1510566466000&api=v2)
* Documents cited in briefing on Recommendation 10 include
  + [2013 Registrar Accreditation Agreement](https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en) (RAA), including [RAA WHOIS requirements for Registrants](https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#whois)
  + [Privacy & Proxy Services Accreditation Issues (PPSAI) PDP](https://community.icann.org/pages/viewpage.action?pageId=43983094)
  + [PDP Final Report](http://gnso.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf)
  + [GNSO approval of PDP Final Report](http://gnso.icann.org/en/council/resolutions#20160121-1)
  + [Implementation Plan developed](https://www.icann.org/resources/pages/ppsai-2016-08-18-en)
  + [Board approval of Final Report Recommendations](https://features.icann.org/gnso-policy-recommendations-privacy-proxy-services-accreditation)
  + [GAC Advice-Helsinki Communique: Actions and Updates](https://www.icann.org/.../resolutions-helsinki56-gac-advice-scorecard-13dec16-en.pdf)
  + [Current PPAA draft](https://community.icann.org/download/attachments/71604717/PPAA_28Feb_CleanIRTNotes.pdf?version=1&modificationDate=1521637772000&api=v2)(20 March)

In addition, the subgroup requested additional materials and briefings from the ICANN Org

* + [Written answers provided by Registrar Services staff leading PP IRT (20 March)](https://community.icann.org/download/attachments/71604717/WHOISRT_Responses%5B1%5D.pdf?version=1&modificationDate=1521637733000&api=v2)
  + [Compliance staff input](https://community.icann.org/download/attachments/71604717/ICANN%20Contractual%20Compliance%20response%20to%20RDS-WHOIS2%20requests.pdf?version=1&modificationDate=1521637746000&api=v2), includes:
    - 20 March written answers to PP IRT related questions
    - Metrics for P/P Spec in the 2013 RAA
  + [Written implementation briefing](https://community.icann.org/download/attachments/71604717/Written%20Implementation%20Request%20for%20Recommendation%2010.pdf?version=1&modificationDate=1522132669000&api=v2) (27 March)
  + [Responses from ICANN Compliance and Global Domains Division to Data Accuracy Subgroup Questions](https://community.icann.org/download/attachments/71604717/Data%20Accuracy%20Subgroup_Additional%20Questions_GDD%20response.pdf?version=1&modificationDate=1522441949000&api=v2)

Finally, the subgroup applied the RDS-WHOIS2 review team's [agreed framework](https://community.icann.org/download/attachments/71604697/FinalRDS-WHOISRT2Effectivenes.docx?version=1&modificationDate=1519138360000&api=v2) to measure and assess the effectiveness of recommendations,

# Analysis & Findings

[Provide overview of Review Team Findings (including materials of reference).

For this subgroup, relevant review objectives include:

* Topic 1 (a) identify the extent to which ICANN Org has implemented each prior Directory Service Review recommendation (noting differences if any between recommended and implemented steps),
* Topic 1 (b) assess to the degree practical the extent to which implementation of each recommendation was effective in addressing the issue identified by the prior RT or generated additional information useful to management and evolution of WHOIS (RDS)]

WHOIS1 Recommendation 10 advises that consideration be given to several specific objectives, enumerated in the table below. The subgroup's initial findings for each objective are also given in the table below.

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| Recommendation 10 Objective | Subgroup's Initial Findings |
| 1. Clearly labeling WHOIS entries to indicate that registrations have been made by a privacy or proxy service | * Included in PPSAI working group report * Could this also be added to the Consistent Labeling and Display policy? |
| 1. Providing full WHOIS contact details for the privacy/proxy service provider, which are contactable and responsive | * Included in the PPSAI working group report. While details of the standard report process are still being debated, but there is consensus that providers must provide full data and be contactable and responsive within a reasonable timeframe. |
| 1. Adopting agreed standardized relay and reveal processes and timeframes; (these should be clearly published, and proactively advised to potential users of these services so they can make informed choices based on their individual circumstances) | * Law enforcement relay and reveal processes are still being debated and how this would be implemented in a way that would not be burdensome for each side. * Final details of such processes are currently being debated, however the recommendation objective has already been met with the basis consensus model. The IP model has been agreed upon. * Partially defined under 2.4.5 of the RAA spec. |
| 1. Registrars should disclose their relationship with any proxy/privacy service provider; | * Included in PPSAI working group report * Partially defined under 2.3 of the RAA spec |
| 1. Maintaining dedicated abuse points of contact for each provider | * Partially defined under 2.4.1 and 2.4.2 of the RAA spec * Already agreed by Implementation Review Team. |
| 6. Conducting periodic due diligence checks on customer contact information  Proposal from Volker Reply from Lili Reply from Volker Reply from Lili Reply from Volker Reply from Volker Reply from Carlton Reply from Susan Reply from Erika Reply from Volker  To read the full thread, visit: <https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000612.html>  <https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000632.html> | * Review has shown no such checks are currently envisioned. Implementing such reviews may violate the reliance of the underlying registrants on the privacy of their data. “ DISAGREE with the above statement please see comment - * The current RT may want to look further into why this was not addressed in the working group or IRT as this is important element of the recommendation. |
| 1. Maintaining the privacy and integrity of registrations in the event that major problems arise with a privacy/proxy provider | * Included in PPSAI working group report by mandating data escrow. * Partially defined under 2.5 of the RAA spec. |
| 1. Providing clear and unambiguous guidance on the rights and responsibilities of registered name holders, and how those should be managed in the privacy/proxy environment. | * Partially defined under 2.4.4, 2.4.5 and 2.4.6 of the RAA spec. * How effective are these rights and responsibility regarding the effectiveness of proxy registrations and the protection of rights of others. * The 2013 RAA is fairly clear on the rights and responsibilities of the registered name holders.   3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm.  The Proxy service provider assumes all liabilities of the domain name if they refuse to disclose the contact information.  If the Proxy service provider does disclose the contact information then the underlying registrant assumes all liabilities. |

# Problem/Issue

Between the RAA 2013 Spec and this policy, the original recommendation seems to have been addressed. Anything not addressed was clearly not deemed to be important for inclusion by the community, the GNSO and the board who all approved the PPSAI PDP Final Report.

The subgroup proposes no new recommendations at this time specific to the prior RT's recommendation. However, the subgroup intends to track the progress of the PPSAI IRT and consider recommendation(s) if necessary. At this point, the subgroup has identified the following issues:

Issue #1: Current funding proposals for accreditation program create concerns of ICANN failing the goal of onboarding all providers of such services due to inflation of costs. ICANN Org staff seems to be unable to justify proposed accreditation fees, which may endanger the entire program.

Issue #2: Impact of GDPR data redaction requirements on privacy services are yet unknown, but significant impact is expected as personal data becomes hidden by default without use of privacy services.

Issue #3: The implementation should not be delayed due to the GDPR this process is needed more than ever immediately.

Issue #4: The recommendation suggests using a mix of incentives and sanctions to encourage and enforce this policy once implemented. The IRT should be encouraged to discuss incentives, compliance actions have been discussed.

Additional issues in [comments from Lili](https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000597.html):  
2) There is no indication about the legacy domain names that utilize P/P Services before the provider been accredited. Will it be a similar situation as Grandfathered domains?

3) If there is not enough regulation and overseeing in place, P/P service is very likely to be abused.

Refer to the following threads for dialog on these additional issues:

<https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000612.html>

https://mm.icann.org/pipermail/rds-whois2-rt/2018-June/000632.html

# Recommendations

[To be completed for each recommendation - if any - suggested by the subgroup]

Recommendation:

Findings: [what are the findings that support the recommendation]

Rationale:

[What is Intent of recommendation and envisioned outcome?

How did the finding lead to this recommendation?

How significant would impact be if recommendation not addressed?

Is it aligned with ICANN’s Strategic Plan and Mission?

Is it in compliance with scope Review Team set?]

Impact of Recommendation: [What are the impacted areas, e.g. security, transparency, legitimacy, efficiency, diversity etc. Which group/audience will be impacted by this recommendation]

Feasibility of Recommendation: [Document feasibility of recommendation]

Implementation:

[Who are responsible parties that need to be involved in implementation? Community/ICANN org/combination)

What is the target for a successful implementation?

Is related work already underway and how will that dovetail with recommendation?

What is the envisioned implementation timeline? Within 6 months/12 months/more than 12 months]

Priority: [If only 5 recommendations could be implemented due to community bandwidth and other resource constraints, would this recommendation be one of the top 5? Why or why not?]

Level of Consensus